

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

FISHER INDUSTRIES, FISHER SAND
AND GRAVEL CO., AND TGR
CONSTRUCTION, INC., ET. AL.,

Defendants.

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CASE NO. 7:19-CV-403

**UNITED STATES OF AMERICA’S UNOPPOSED MOTION TO EXTEND
SCHEDULING ORDER DEADLINES**

Plaintiff, United States of America (hereinafter “United States”), through the undersigned Assistant United States Attorney, hereby files its Unopposed Motion to Extend Scheduling Order Deadlines and in support hereof, states the following:

BACKGROUND

1. The United States filed its Complaint for Injunctive Relief (Docket No. 1) as well as Plaintiff’s Emergency Motion for Temporary Restraining Order and Preliminary Injunction (Docket No. 5) on December 5, 2019.
2. On December 16, 2019, the United States filed its First Amended Complaint for Injunctive Relief adding Defendant TGR Construction, Inc. as a defendant in the case (Docket No. 17).
3. On September 10, 2020, the Court entered its Rule 16 Scheduling Order (Docket No. 54). In its Scheduling Order, the Court set the following deadlines which remain pending:

May 28, 2021	Experts (Party with the burden of proof)
June 11, 2021	Defensive Experts
July 02, 2021	Discovery
July 16, 2021	Pretrial Motions Deadline
August 13, 2021	Motions Hearing
August 30, 2021	Joint Pretrial Order
September 7, 2021	Final Pretrial Conference
September 8, 2021	Jury Selection & Trial Setting

4. At the Court's May 5, 2021 Status Conference for the above-styled case, the United States informed the Court that Arcadis had been hired as an expert to perform testing and render expert opinions regarding hydraulic impacts caused by the bollard fence system constructed by the Fisher Defendants, geotechnical testing and assessments of erosion along the banks of the Rio Grande River and along the bollard fence system as well as structural testing and assessment regarding the structural integrity of the bollard fence system. Arcadis performed required on site testing of the bollard fence system April 27-29, 2021 and is currently analyzing results of the testing.
5. On May 7, 2021, the United States filed its opposed motion for leave to file its second amended complaint (Docket No. 62). The motion remains pending before the court. Additionally, the parties filed a Stipulation of Dismissal pursuant to Rule 41(a)(2) F.R.C.P., stipulating to the dismissal of Neuhaus & Sons, LLC without prejudice, each party to bear its own costs (Docket No. 63).

REQUEST FOR EXTENSION OF REMAINING SCHEDULING ORDER DEADLINES

6. Undersigned counsel for the United States has conferred with representatives from Arcadis and final reports regarding geotechnical, hydraulic and structural opinions should be completed August 20, 2021. The testing and expert opinions being rendered by Arcadis are necessary to determine whether the bollard fence system constructed by the Fisher Defendants impairs the enforcement of the 1970 Treaty

between the United States and Mexico, primarily whether the bollard fence structure causes deflections of water in a flood scenario over and above the tolerances set by the USIBWC, whether the bollard fence system is structurally sound and whether the grading and altering of the river bank as part of the construction of the bollard fence system will cause the international boundary between the United States and Mexico to shift.

7. Accordingly, undersigned counsel has conferred with counsel for the Fisher Defendants and proposes the following extended dates to the Court's current Scheduling Order:

August 20, 2021	Experts (Party with the burden of proof)
October 08, 2021	Defensive Experts
December 31, 2021	Discovery
January 14, 2022	Pretrial Motions Deadline
February 18, 2022	Motions Hearing
March 18, 2022	Joint Pretrial Order
April __, 2022	Final Pretrial Conference
April __, 2022	Jury Selection & Trial Setting

CERTIFICATE OF CONFERENCE

Undersigned counsel for the United States conferred with Mark Courtois, counsel for the Fisher Defendants regarding this Motion to Extend Scheduling Order Deadlines and Mr. Courtois has indicated that the Fisher Defendants are unopposed to this motion and the proposed dates.

PRAYER

The United States prays the Court grant its Motion to Extend Scheduling Order Deadlines and enter an order extending the remaining deadlines as proposed by the United States.

Respectfully submitted,

JENNIFER B. LOWERY

Acting United States Attorney

Southern District of Texas

DANIEL DAVID HU

Chief, Civil Division

BY: *s/ E. Paxton Warner*

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Attorney in Charge for the United States
of America

CERTIFICATE OF SERVICE

I, E. Paxton Warner, do hereby certify that on May 27, 2021, a copy of the foregoing was served via ECF and email to the following:

Mark Courtois

mjcourtois@fflp.com

Attorney for the Fisher Defendants

By: *s/ E. Paxton Warner*

E. PAXTON WARNER

Assistant United States Attorney